

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE:

B-214574

DATE:

March 27, 1984

MATTER OF:

ECOS Management Criteria, Inc.

DIGEST:

Protest concerning the determination to change a procurement from a small business set-aside to an unrestricted procurement filed with GAO more than 10 days after the protester received notice from the agency of the determination to resolicit is untimely and not for consideration on the merits.

ECOS Management Criteria, Inc. (ECOS), protests the determination of the Air National Guard, Van Nuys, California, to change a procurement for environmental engineering services for the preparation of an environmental impact statement from a small business set-aside to an unrestricted procurement.

We dismiss the protest as untimely.

On December 22, 1983, the Air National Guard advertised the instant procurement as a small business set-aside in the Commerce Business Daily (CBD) and requested that interested firms submit a detailed resume of their capabilities. ECOS was selected among the five most qualified firms. However, a contracting official for the Air National Guard telephoned ECOS on February 14, 1984, to inform ECOS that, due to recent congressional action, no architect/engineer procurement estimated to cost over \$85,000 can be set aside for small business and that the Air National Guard must readvertise in the CBD without restriction to small businesses. ECOS claims that in response to a call from ECOS 2 days later inquiring as to where the Air National Guard obtained its information as to the recent congressional action, the Air National Guard admitted, on February 17, 1984, that its information was incorrect, but stated that a new advertisement for an unrestricted procurement had already been submitted to the CBD. The new advertisement was published in the CBD on February 23, 1984. ECOS's protest was filed in (received by) this Office on March 6, 1984.

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Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(2) (1983), require that:

" . . . [B]id protests shall be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier."

Here, ECOS admits that it knew on February 14, 1984, that the Air National Guard had determined to change the instant procurement from a small business set-aside to an unrestricted procurement and to readvertise. On February 17, 1984, ECOS learned that despite the incorrect basis for withdrawing the set-aside, the Air National Guard intended to continue with the unrestricted procurement. Therefore, the basis for protest was known on February 17. Because ECOS's protest was filed with our Office more than 10 working days after ECOS knew the basis for protest, the protest is untimely and not for consideration on the merits.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel